

THE UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OPERATING ENGINEERS LOCAL 324
HEALTH CARE PLAN, ET AL,

Plaintiffs,

vs.

Case No. 06-15654

HONORABLE VICTORIA A. ROBERTS
HONORABLE STEVEN D. PEPE

D.P. ENVIRONMENTAL HAULING, LLC,

Defendant.
_____ /

ORDER DENYING DEFENDANT'S MOTION TO COMPEL (DKT. #13)

On July 27, 2007, Defendant filed his motion to compel Plaintiffs to provide further answers to Defendant's Request for Production of Documents numbered 4 and 5 (Dkt. #13). Plaintiffs filed a response opposing Defendant's motion on August 2, 2007 (Dkt. #15). On August 6, 2007, Defendant's motion was referred for hearing and determination pursuant to 28 U.S.C. § 636 (b)(1)(A). On August 29, 2007, a hearing was held on Defendant's motion at which all unresolved issues were heard.

For the reasons stated on the record and indicated below, **IT IS ORDERED THAT:**

1. Plaintiffs are **not** required to provide any further response to Defendant's Request to Produce No. 4. Plaintiffs' counsel indicated that his clients were not in possession of any tape recorded statements, summary statements, notes, journal entries or other records reflecting what occurred, what was stated or what was observed when the Agreement at issue was signed by

Damon Palmer on or about May 24, 2006. Based on that representation, Defendant's request for production is **DENIED**.

2. Plaintiffs are **not** required to provide any further response to Defendant's Request to Produce No. 5. Defendant's Request to Produce No. 5 seeks copies of all worksheets, notes, records and journal entries used by the Fund Auditor, Mr. Nichols, in arriving at the classification of the work performed by employees Hulick, Taylor and Springsdorf and the sites where the work was performed during all periods audited. Defendant's counsel indicated that figures for several months (i.e., June, July and August) were largely not in dispute, but that Defendant sought further information regarding the months of September, October, November and December. Yet, Defendant has failed to show a substantial need for such information. Plaintiffs have not listed Mr. Nichols as an expert witness in their witness lists and the matters about which he is expected to testify involve applying a simple arithmetical calculation of the number of hours worked by Defendant's employees multiplied by the hourly contribution rate, as called for in the Agreement. Plaintiffs' counsel asserts that Mr. Nichols' work sheets are work product not subject to discovery under Fed. R. Civ. P 26(b)(3) absent a further showing of substantial need and undue hardship in obtaining equivalent data. Defense counsel acknowledged at the hearing that he had not had anyone attempt computations for these months from the data available to his client. Accordingly, Defendant's request for a further response to Request to Produce No. 5 is **DENIED** until such time as Defendant can demonstrate a reasonable inability to calculate said sums and a substantial need for the information requested.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. §

636(b)(1) and E.D. Mich. LR 72.1(d)(2). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge. Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

SO ORDERED.

Date: August 29, 2007
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2007, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: Patrick A. Aseltine, Robert A. Farr, Jr., George H. Kruszewski, and I hereby certify that I have mailed United States Postal Service the paper to the following non-ECF participants: not applicable

s/ James P. Peltier
James P. Peltier
Courtroom Deputy Clerk
U.S. District Court
600 Church St.
Flint, MI 48502
810-341-7850
pete__peliter@mied.uscourts.gov